

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No.:	09/911,703	Group Art Unit:	1644
Confirmation No.:	4927	Examiner:	R. Schwadron
Filed:	25 July 2001		
Applicant:	Darrell R. ANDERSON et al.		
For:	Anti-CD20 Antibodies (as amended)		

Mail Stop **Petition**
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

PETITION TO ACCEPT AN UNINTENTIONALLY DELAYED PRIORITY CLAIM

Sir:

When the captioned application was filed on 25 July 2001, the filing papers and the original declaration executed by the inventors under § 1.63 indicated applicant's intention to claim priority under 35 U.S.C. § 120 to prior U.S. application serial nos. 07/978,891, filed 13 November 1992; 08/149,099, filed 3 November 1993; and 08/475,813, filed 7 June 1995. However, the specification as filed did not refer to all of the prior applications, and the Office did not recognize the intended priority claim on the filing receipt.

Compliance with the requirements of § 1.78(a)(3)

- (i) In the amendment filed on 12 August 2005, applicant amended the first sentence of the specification to provide the reference required by 35 U.S.C. § 120 and 37 C.F.R. § 1.78(a)(2) to all of the priority applications indicated in the filing papers and the original declaration.
- (ii) The Director is requested to debit the surcharge set forth in § 1.17(t) (**\$ 1,370**) from our **Deposit Account No. 18-1260**.

- (iii) The entire delay between the date that is four months after the filing date of the captioned application (*i.e.*, the due date specified in § 1.78(a)(2)(ii)) and the date the amendment to the priority claim was filed was unintentional.

Compliance with the requirements of § 1.116

This petition is filed after a final rejection under § 1.113. Applicant requests consideration of, and favorable action on, this petition under § 1.116.

The petition is necessary to comply with the Office's requirements, as set forth in the final Office action. Although the examiner noted the defect in the priority claim in the first action on the merits mailed on 7 April 2005 (see ¶ 4 of the first action), that Office action did not specify all of the requirements of § 1.78(a)(3). Instead, it suggested that a corrective amendment would be entered if presented as part of a reply. Such an amendment was submitted in the reply filed on 12 August 2005. Thus, this petition was not earlier presented because the requirements it addresses were first stated by the examiner in the final Office action.

Moreover, acceptance of the delayed priority claim would not raise any new issues that would require further consideration or search by the examiner. It is clear from the final Office action that the examiner applied the prior art as though the priority claim had been accepted. For example, a 1991 publication by Anderson *et al.* forms the basis for a rejection of certain claims under 35 U.S.C. § 102(a). *See* final action at ¶ 12. The Anderson 1991 publication was published more than one year before the filing dates of all but the earliest claimed priority application. Consequently, if the examiner had not accorded the pending claims benefit of all of the applications identified in the amended priority claim, the reference would have been applied under § 102(b). Similarly, only certain claims which the examiner found deficient with respect to the description requirement of 35 U.S.C. § 112 were rejected under § 102(b) over the patent that was granted on one of the claimed priority applications. *See* final action at ¶ 11. If the examiner had considered that the priority claim was defective, that rejection would have been applied against all of the claims.

The record as a whole indicates that the claims were searched and examined with reference to the priority claim indicated in the original filing papers. Thus, acceptance of the delayed priority claim now would not raise any new substantive patentability issues.

Conclusion

Applicant requests that the Director accept the unintentionally delayed claim under 35 U.S.C. §§ 120 and 121 in this application for benefit of the prior-filed applications identified above.

Any additional fee required for entry or consideration of this paper may be charged to our Deposit Account No. 18-1260.

Respectfully submitted,

/David L. Fitzgerald/

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